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12

13 UNITED STATES DISTRICT COURT
14 DISTRICT OF ARIZONA

15 Roy and Josie Fisher, et al.,
16 Plaintiffs,
17 v.
18 United States of America,
19 Plaintiff-Intervenors,
20 v.
21 Anita Lohr, et al.,
22 Defendants,
23 Sidney L. Sutton, et al.,
24 Defendant-Intervenors,

Case No. 4:74-CV-00090-DCB

**MENDOZA PLAINTIFFS' RESPONSE
TO TUSD SUPPLEMENTAL NOTICE
AND REPORT OF COMPLIANCE AND
LIMITED REQUEST FOR RELIEF
FROM ORDER (DOC. 2500)**

Hon. David C. Bury

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1 Maria Mendoza, et al.,

Case No. CV 74-204 TUC DCB

2 Plaintiffs,

3 United States of America,

4 Plaintiff-Intervenor,

5 v.

6 Tucson United School District No. One, et al.,

7 Defendants.

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10 **INTRODUCTION**

11 Under the September 6, 2018 Order (“9/6/18 Order”) (Doc. 2123), this Court
12 required TUSD to develop the ALE Policy Manual “to guide the District’s future decisions
13 related to ALE programs” because it “f[ound] that *de jure* discrimination has not been
14 eliminated to the extent practicable as planned in the action plans” in this USP area of the
15 school district’s operations (9/6/18 Order at 12:8-10, 98:17-19). The Court’s more recent
16 6/15/20 Order re: ALE Policy Manual (“6/15/20 Order”) (Doc. 2474) expressly
17 incorporated the 9/6/18 Order’s ALE discussion (at 2:7-16) and addressed the ALE Policy
18 Manual’s compliance with that Order and the USP.
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21 In TUSD’s Supplemental Notice and Report of Compliance and Limited Request
22 for Relief From Order (“TUSD Notice and Request”) (Doc. 2500), TUSD complains that
23 this Court’s 6/15/20 Order required it “to develop new policies and plans for guiding
24 future” District action, which it says “go beyond the Special Master’s report, and on which
25 the District has not had the opportunity to be heard.” TUSD is wrong and its assertions are
26 misleading. The 6/15/20 Order was directed at ensuring that the ALE Policy Manual
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1 completion plan comports to the existing requirements of the 9/6/18 Order and brings
2 TUSD into compliance with the USP.¹ (*See* 6/15/20 Order at 4-6 (detailing 9/6/18 ALE
3 Policy Manual Requirements under the heading “September 6, 2018, Unitary Status
4 Order”).)²

5
6 As detailed more fully below, the District’s request for relief from portions of the
7 6/15/20 Order is premised on its inaccurate framing of the Court’s ALE Policy Manual
8 directives (in the 9/6/18 and 6/15/20 Orders) as so unforgivingly rigid that this completion
9 plan would “become worthless” and even harmful to students’ academic achievement
10 (TUSD Notice and Request at 5: 14-18), rather than viewing the ALE Policy Manual as a
11 guide to facilitate viable ALE expansion informed by what TUSD has learned from its past
12 experience expanding some ALEs and programs, and that includes strategies to deal with
13 resource issues that may arise as this Court expressly contemplated (*see e.g.*, 6/15/20 Order
14 at 17:22-25). Moreover, as also set out below, there remain directives in the 6/15/20
15 Order (including directives originally in the 9/6/18 Order or the USP) with respect to
16 which TUSD has yet to comply.

17
18 For ease of reference, after addressing the District’s overall objection to having
19 been directed to include plans for ALE expansion in the ALE Policy Manual, Mendoza
20 Plaintiffs have ordered the topics set out below in the order in which they appear in the

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22
23 ¹ The deadline for the District to move this Court to reconsider its 9/6/18 Order lapsed in
24 September 2018. (*See* L.R. Civ. 7.2(g)(2).) The District’s deadline to move for
25 reconsideration of the 6/15/20 Order lapsed on June 29, 2020. (*Id.*) Accordingly, this
Court may properly decline to consider the District’s request for relief, which is, in effect,
a motion for reconsideration.

26 ² Moreover, TUSD’s assertion to the contrary notwithstanding, the District already had an
27 opportunity to be heard on its complaint that completion plans reflect new requirements --
28 and this Court expressly rejected that assertion. (9/6/18 Order at 12:7-10 (“The Court
rejects the Defendant’s objection to completion plans as new requirements, not contained
in the USP...”).)

1 Court's 6/15/20 Order.³ They have included their responses to the District's specific
2 requests for relief beyond that relating to the overall direction to plan for expansion in their
3 arguments relating to the relevant topic.

4 **ARGUMENT**

5 **Schedule for ALE Growth and Expansion**

6 The Mendoza Plaintiffs here address the District's request for relief from the
7 6/15/20 Order's directives concerning growth across various ALEs. (TUSD Notice and
8 Request at 4:12-21.)
9

10 Ignoring the 6/15/20 Order language contemplating that the ALE Policy Manual is
11 to serve as a "transparent *guide* for the future," (emphasis added), TUSD asserts that this
12 Court is "demand[ing] a level of precision [for future ALE expansion] that would be
13 impossible" in light of uncertainty as to future budget, student enrollment, and availability
14 of qualified teachers. (TUSD Notice and Request at 5:6-14.) TUSD further asserts that
15 the claimed rigidity of this Court's ALE expansion directives will result in a "worthless
16 plan" that will harm progress and will be "misleading to the school community." (*Id.* at
17 14-19.)
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20 This Court should reject the District's request for relief because it is based on an
21 inaccurate framing of the 6/15/20 Order's directives and ignores the long history of multi-
22 year desegregation plans or guides in this case notwithstanding that they too involved
23 varying degrees of "uncertainty". Mendoza Plaintiffs further observe that the District's
24 argument would suggest that it is incapable of doing any future planning because to some
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27 _____
28 ³ If a topic is omitted, that indicates that the Mendoza Plaintiffs have no comments or
objections relating to that specific topic.

1 degree all educational planning must be carried out in the context of budgetary constraints,
2 student enrollment, and the ability to hire and retain qualified teachers. However, the
3 purpose of a plan also is to set budget and hiring priorities and trade offs, all of which the
4 District apparently now is claiming an inability to do.

5
6 Further, this Court has long asked the District to engage in planning “to guide the
7 District in the future” toward viable ALE growth. (6/15/20 Order at 2:13-16; *see also*
8 9/6/18 Order at 98:6-11 (“The ALE Policy Manual should guide the District’s ongoing
9 operation of the ALE Program pursuant to chosen effective strategies. The District has
10 identified various ALE strategies ... and it must now determine whether these strategies
11 were sufficiently effective and are fiscally sustainable to warrant permanency, including a
12 determination that the District can meet staffing and transportation requirements”).) This
13 Court further called for built-in flexibility in the ALE Policy Manual in recognition that
14 there exists some uncertainty in setting policies for future ALE growth planning. (*See e.g.*,
15 6/15/20 Order at 9:5-9 (recognizing resource limitations may change as a result of self-
16 contained or cluster GATE demands); 10:23-24 (authorizing the use of waitlists if
17 expansion of the “opt-out” enrollment policy causes resource issues); 10:13-15 (noting
18 that TUSD failed to address stipends as a mechanism to address potential future certified
19 GATE teacher shortage); 20:15-17 (allowing for in-district student preferences and limits
20 to UHS’s BLAST, BOOST, BOUNCE programs “to the extent resources limit” them).
21 These directives do not bespeak a Court order requiring impossible adherence to precise
22 mandates that render the plan harmful or worthless; rather, the Court’s orders plainly
23 called for a guide that is to reflect that TUSD has thought through issues and policies to
24 facilitate its implementation of viable ALE expansion targets.
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1 Moreover, TUSD ignores the history of this case in failing to provide any plan or
2 schedule for ALE growth (with respect to, for example, introducing one CRC AP course at
3 each high school and one CRC AAC at every middle school (*see* 6/15/20 Order at 17:5-
4 10)) because it says it cannot predict viable expansion years into the future based on its
5 assertion that it cannot forecast future budgets, student enrollment, or the exact numbers of
6 teachers at each school each year. (TUSD Notice and Request at 5:6-14.) This Court will
7 remember, for example, that the 2015 CRC Intervention Plan (Doc. 1761, Exhibit A), the
8 implementation of which this Court found resulted in significant expansion of CRC access
9 and enrollment (notwithstanding hiccups in its implementation), was a three-year plan to
10 introduce multiple CRCs across every TUSD high school, middle school, and K-8 school,
11 and at many elementary schools. (*See* Doc. 1761, Exhibit A at 7-12.) Plainly, TUSD’s
12 claimed barriers did not result in this plan having been “worthless” and harmful to
13 students’ academic achievement.
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17 Further, because this Court stressed the importance of transparency in the ALE
18 Policy Manual, and to address TUSD’s concern about potentially “misleading [] the school
19 community” (TUSD Notice and Request at 6:24-25), Mendoza Plaintiffs see no reason
20 why TUSD could not simply expressly acknowledge the existence of future uncertainty or
21 potential resource limitations in the ALE Policy Manual itself. Similarly, to the extent
22 uncertainties are heightened by the impacts of COVID (as stated by the District in its
23 Notice and Request at 5:8-9), something all understand, that, too, can be explicitly stated.
24 By way of example, with respect to the phased in plan for growing AVID, TUSD can
25 expressly state that future uncertainties may result in shifting introduction of AVID to a
26 school in which such introduction has become more viable over a school that initially was
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1 scheduled for such introduction. Indeed, such an approach was successfully taken with
2 respect to the implementation of the multi-year facilities plan (containing a prioritized list
3 of needed facilities projects) -- an area in which TUSD already has attained unitary status.⁴
4 Specifically, while TUSD generally undertook facilities repair projects based on USP-
5 mandated priority under the Multi-Year Facilities Plan, it also considered budget
6 constraints in determining the order in which repairs were made. (*See* Appendix IX-3 to
7 TUSD 2016-17 Annual Report, Multi-Year Facilities Plan (Doc. 2067-1) at IX-3, p.7 (In
8 response to question “What should we do first?”: “This will reflect not only [USP] priority
9 [such as projects addressing safety issues and projects at schools with low FCI scores], but
10 adequate budget and appropriate budget decisions as well.”)) Accordingly, nothing about
11 the plans or schedules for ALE growth called for by this Court suggest that these
12 components of the ALE Policy Manual would be materially different from other planning
13 that the District has done to implement the USP, much less worthless or harmful to
14 academic achievement.⁵

19 ⁴ TUSD was awarded partial unitary status as to Facilities except with respect to its
20 recalculation of the facilities condition index scores to ensure that agreed upon criteria are
21 used. (9/6/18 Order at 151:9-13.) (Mendoza Plaintiffs note their on-going objection to any
22 award of unitary status given the District’s failure to have met Constitutional dictates for
such an award but do observe that the District demonstrated the ability to do multi-year
planning in this area.)

23 ⁵ On the contrary, TUSD likely is much better positioned to comply with this Court’s
24 6/15/20 Order directives for planning for viable ALE growth than it was with respect to
25 past planning efforts because it now has the benefit of experience from which it should
26 have learned about ALE demand and resource need. For example, in the 6/15/20 Order,
27 this Court detailed TUSD’s past expansion of AP and AACs at schools where the Court
28 had identified need for immediate improvement before observing that “[t]hese
undertakings would have informed resource and demand assessments for ALE policies for
future planning purposes, but the ALE Policy Manual stopped short of clarifying ALE
policies for future growth... [and] fails to reflect the demand analysis used by the District
for determining the number of AP courses at each high school based on needed access.”
(6/15/20 Order at 17:15-18-2.)

1 This Court should accordingly deny the District's request for relief from this
2 Court's orders calling for schedules for ALE expansion. (*See* TUSD Notice and Request
3 at 4:22-7:15.)

4 **AVID and a Plan for AVID Expansion**

5 The Mendoza Plaintiffs here address both the changes the District made to the ALE
6 Policy Manual to respond to the Court's Order of 6/15/20 and its explanation for why it
7 requests relief from so much of that Order as directed the District to clarify its phased in
8 plan for growing AVID to attain the goal of becoming an AVID District.

9 Even as it claims to have embraced the goal of becoming an AVID District, TUSD
10 asserts in its request for relief (ALE Notice and Request at 7-8) as well as in the ALE
11 Policy Manual itself (ALE Policy Manual at 31 and Appendix A at 47)⁶ that it cannot
12 provide **any** information about how it intends to expand AVID. Yet, as this Court
13 expressly noted in its 9/6/18 Order, in its own District-created ALE Action Plan (Doc.
14 1654-2 at 32), the District itself proposed to "[c]reate a plan that outlines how [AVID]

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18 Indeed, Mendoza Plaintiffs respectfully suggest that perhaps the District's perception that
19 future uncertainties preclude planning for viable ALE growth is at least in part based on its
20 failure to adequately consider demand and resource analysis as it relates to past ALE
21 experiences, including that reference by the Court as noted above.

22 ⁶ Notwithstanding the Court's admonitions in this regard (*see, e.g.*, 6/15/20 Order at 3:13-
23 19), the District's filing fails to include all relevant information in its revised ALE Policy
24 Manual. Thus TUSD reports that it is "developing Utterback...into an AVID National
25 Demonstration school" only in its pleading (ALE Notice and Request at 7:22-23) but not in
26 the ALE Policy Manual itself. (See ALE Policy Manual at 30-31 and Appendix A.) Yet,
27 according to the Arizona Snapshot entry on the AVID website (avid.org), designation as a
28 National Demonstration School, if achieved, is not insignificant. According to the website
such schools "are supposed to be exemplary models of the AVID College Readiness
System." Additionally, such schools "undergo a rigorous validation process and are
required to be revalidated every few years to ensure high levels of implementation, with
quality and fidelity to AVID strategies schoolwide." (*Id.*) Not surprisingly given its
silence on the effort now going forward at Utterback, the ALE Policy Manual is similarly
silent on whether efforts will be made to attain the National Demonstration School
designation for other schools in TUSD or even what criteria were used to select Utterback
for this effort and what criteria will be applied in the future if other schools are to be
included.

1 expansion could take place over a multi-year period.” (9/6/18 Order at 96:1-3.)

2 Significantly, the District now not only asserts that it cannot provide a timetable for a
3 further rollout of AVID; it fails even to offer either a target date for full District-wide
4 implementation or a statement of what criteria it will apply to determine the order in which
5 it will implement AVID at particular schools going forward.
6

7 The District’s response to the Court’s 6/15/20 Order also fails to address additional
8 ways in which AVID can be expanded beyond rolling the program out at a new school.
9 This is a significant omission given that, as the Court has noted, AVID is a “**strategy** [as
10 distinct from a program that dictates the creation of a new class to provide access]...which
11 creates an atmosphere of academic excellence in a school to offset stereotype threat and
12 increase participation in ALE.” (6/15/20 Order at 16:11-13; emphasis added.) An
13 example of what is missing is found in Appendix A to the ALE Policy Manual which
14 states that the District AVID Coordinator currently is working with the MASSD to develop
15 a tutor-training curriculum that incorporates AVID strategies. (Appendix A at 48.) Surely,
16 the District could readily plan to implement such a curriculum for tutoring offered through
17 the AASD (and, for that matter, throughout the District, beyond the tutoring specifically
18 offered by the Student Services Departments).
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22 *AVID and ELL Students*

23 Additionally, notably absent in the section of the ALE Policy Manual relating to
24 AVID as well as in the section concerning “the support services available to ELL students,
25 which are designed to address the fact that they are learning English” (Order dated 6/15/20
26 at 14:17-18, addressed in the ALE Policy Manual at 16-17 according to the TUSD Index of
27 Issues Addressed from ECF 2474, Doc. 2500-3, at Item # 18) is any discussion of the ways
28

1 in which the AVID program is being used or is planned to be used to increase the access to
2 ALEs of the District's ELL students. In this regard Mendoza Plaintiffs note that the
3 AVID website (avid.org) expressly identifies the Long-Term English Learners Can Excel
4 elective class and states that it "provides explicit instruction in English language
5 development and academic language through reading, writing, oral language, academic
6 vocabulary, and college readiness skills." Mendoza Plaintiffs have seen nothing in the
7 ALE Policy Manual and Appendix A to indicate whether the District now offers this
8 elective (and where). Nor, given the District's failure to provide any indication of any of
9 its plans for AVID expansion, does the ALE Policy Manual indicate whether there is any
10 intention to add (if already offered somewhere in the District) or expand this elective in the
11 future.
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14 Because it is relevant both to the discussion of current AVID offerings and plans as
15 well as to supports for ELL students to prepare for ALE courses, Mendoza Plaintiffs also
16 note here that notwithstanding the Court's repeated statements of concern relating to the
17 District's failures to address the particular supports needed by its ELL students (*see, e.g.*,
18 6/15/20 Order at 14:7-19) neither the ALE Policy Manual nor Appendix A indicate
19 whether and to what extent the District now uses (or plans to add or expand its use of)
20 AVID's instructional models for AVID teachers that explicitly embed ELL strategies.
21 (*See* avid.org and English Language Learners.)
22
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24 Based on the foregoing discussion, Mendoza Plaintiffs request the Court to deny the
25 District's request that it be relieved from its directions that it plan for AVID expansion and
26 that it order the District to revise the ALE Policy Manual to address the deficiencies in the
27 present manual that are set forth above.
28

Self-Contained GATE

1
2 Through a request for relief in TUSD’s Notice and Request, the District avoids
3 having to acknowledge that it has again failed to comply with this Court’s repeated order
4 that it identify plans for the growth of self-contained and cluster GATE programs in the
5 District. (See 6/15/20 Order at 8:12-13.) As a result of this significant omission, TUSD
6 has again “sidestep[ed] the Court’s directive that the District consider whether long travel
7 times to the self-contained GATE schools depress enrollment or if availability is limited by
8 GATE-certified teacher shortages.”⁷ (See *id.* at 8:12-15.) This District failure is of
9 particular concern because, as this Court recognized, “one of the reasons most frequently
10 given for why families decide not to send their qualified students to self-contained
11 programs is transportation.” (9/16/18 Order at 37:7-9.)⁸

14 This Court further ordered the District to “clarify in the ALE Policy Manual,
15 expressly, that limited resources do not impede future growth in self-contained, including
16 cluster, GATE programs based on prioritizing viable growth of this ALE program at
17 specific schools, with Erickson ES or Magee K-8 being considered as top priorities
18 because both are large schools with over 20% African American students.” (6/15/20 Order
19 at 9:1-5.) The District’s statement that “limited financial resources do not impede
20 immediate growth for Self-Contained or Cluster-GATE programs” (ALE Policy Manual at
21 14) fails to comply with this Court’s order because it is rendered meaningless in the
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25 ⁷ Mendoza Plaintiffs further observe that while the ALE Policy Manual cited transportation
26 travel time as it relates to the TWDL GATE program at Hollinger, that discussion failed to
27 address whether travel times “depress enrollment” at that school and entirely omitted such
28 analysis as to all other self-contained GATE programs.

⁸ This issue is further discussed in the argument section below relating to the
Transportation Plan.

1 absence of any discussion of viable GATE growth in specific schools. Nor does the
2 District's statement that it will "*consider* whether Cluster GATE can be expanded to
3 Erickson *in the future*" (*id.* at 14, n.5; emphasis added) comport with this Court's order
4 that Erickson be a "top priority" for viable growth of self-contained GATE, including
5 Cluster GATE.
6

7 The District seemingly suggests that there exists no need for, or no limitations to,
8 expanding self-contained GATE to meet need "[b]ecause the total number of GATE-
9 qualified students across the entire District that did not enter a GATE program in SY 2018-
10 19 was only 64, including only 5 African American students... ." (ALE Policy Manual at
11 8.) This misleading analysis conflates all GATE programs with the result that the need for
12 self-contained GATE expansion gets buried. By way of example, the ALE Progress
13 Report makes clear that 22 -- not 5 -- African American students out of 42 (or 52%) who
14 qualified for self-contained GATE were not enrolled in that program in 2018-19. (ALE
15 Progress Report, Doc. 2267-2 at 20.) That some of these African American students may
16 have instead enrolled in GATE programs that offer a lesser experience than the self-
17 contained GATE program they qualified for does not address or absolve the District from
18 planning for viable self-contained GATE growth available to all who qualify.
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22 Accordingly, the District should be ordered to take action to immediately plan for
23 the GATE expansion as ordered by this Court, including that Erickson be prioritized for
24 future growth of the program, and that the clarification concerning whether limited
25 resources impede growth particularly of self-contained GATE for all who qualify be
26 provided within the context of planned viable growth of this ALE program at specific
27 schools.
28

Opt-Out Enrollment

1
2 In the 6/15/20 Order, following this Court’s directive that TUSD plan for viable
3 self-contained GATE growth (with Erickson or Magee as “top priorities”), this Court
4 ordered the District to also “introduce the opt-out policy for self-contained GATE at the
5 start of SY 2020-21” and that “the opt-out policy should [further] apply to pull-out
6 GATE... .” (6/15/20 Order at 9:1-5, 9:18-20, 10:21-23, 11:3.) Because this Court
7 recognized that these directives to provide access and enrollment to GATE to all
8 qualifying students (who do not opt-out) potentially “may overwhelm [TUSD’s] resources,
9 especially for GATE certified teachers,” this Court provided TUSD flexibility by allowing
10 the “use of waiting lists in SY 2020-21,” raising the issue of stipends to increase the
11 number of GATE certified teachers, and requesting clarification for a phased in plan for
12 implementing the opt-out policy in pull-out GATE.
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16 However, in the ALE Policy Manual, TUSD has significantly narrowed the scope of
17 the GATE expansion effort this Court ordered. The District has declined to put forth any
18 plan for self-contained GATE expansion, limited the self-contained GATE opt-out policy
19 to only “students who are *already* enrolled” at White and Pistor (only two of nine self-
20 contained GATE programs), and refused clarifying any phased in plan for implementing
21 the opt-out policy in pull-out GATE. (*See* ALE Policy Manual at 8; TUSD Notice and
22 Request 4-7.) Unfortunately, the District’s failure to comply with this Court’s 6/15/20
23 directives for the 2020-21 school year (which has now commenced) means that the
24 expansion of students’ access and enrollment in self-contained and pull out GATE that this
25 Court contemplated must now wait until the 2021-22 school year.
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1 Further, the District inaccurately purports to address this Court’s related directives
2 concerning waitlists and a phased in plan where it asserts the following: “Because the total
3 number of GATE-qualified students across the entire District that did not enter a GATE
4 program in SY 2018-19 was only 64, including only 5 African American students, the
5 District does not anticipate a need to develop or implement a phased in plan or waiting list
6 for automatically enrolling these students.” (ALE Policy Manual at 8.)
7

8 The District is wrong for two reasons. First, TUSD’s claim that it lacks any need
9 for a waiting list or phased in plan is premised on TUSD’s significantly narrowing of the
10 6/15/20 directives concerning growth of self-contained GATE and implementation of the
11 opt-out enrollment policy. Second, as detailed in the section above concerning self-
12 contained GATE, TUSD’s analysis concerning African American students’ self-contained
13 GATE enrollment conflates all GATE programs and is therefore misleading. Indeed,
14 TUSD’s ALE Progress Report makes clear that 22 of 42 (52%) of African American
15 students who qualified for self-contained GATE, and 182 of 286 (64%) of Latinos who
16 qualified, were not enrolled in that program in 2018-19. (ALE Progress Report at 20.)
17 Further, a total of 413 students across the District who qualified for self-contained GATE
18 in 2018-19 did not enroll in that program, not the 64 that TUSD suggests. (*Compare Id.*
19 *with* ALE Policy Manual at 8, 14 (TUSD “provides GATE services to all students who
20 qualify.”).) Thus, plainly, TUSD’s assessment that it does not need a phased-in plan to
21 implement the opt-out policy or waiting lists is premised on its non-compliance with the
22 6/15/20 Order, and the District, therefore, has also failed to comply with the directives
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1 concerning the use of waiting lists and the phased-in policy.⁹ This Court should reject the
2 District’s attempt to again sidestep the growth of access and enrollment for all students
3 qualifying for self-contained and pull-out GATE that this Court ordered.

4 Accordingly, Mendoza Plaintiffs respectfully request that the District be ordered to
5 immediately comply with the above-discussed directives. Mendoza Plaintiffs further
6 respectfully suggest that because implementation of the opt-out policy directives this Court
7 ordered must now wait for the 2021-22 school year, TUSD has ample time to carefully
8 assess GATE demand and resource needs based on its past experience, and to carefully
9 plan for the GATE expansion and phased-in opt-out plan this Court ordered in its 6/15/20
10 Order.
11
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13 **ALE and AP Tutoring**

14 Unfortunately, the District has failed to fully provide the clarification this Court
15 ordered be included in the ALE Policy Manual relating to the role teachers are to play in
16 students’ receipt of ALE and AP tutoring. While this Court ordered that clarification be
17 provided that teachers will be available to students “through the use of
18 advisory/intervention or conference periods” (6/15/20 Order at 16:7-10), the District
19 makes no reference to these periods in the ALE Policy Manual, what these periods are, or
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22 ⁹ This Court requested that TUSD “confirm that there are no waiting lists and students are
23 not turned away from GATE programs, especially self-contained and cluster GATE,”
24 noting that it “considers the need to stop ALE enrollment because seats are no longer
25 available to be the same as turning students away.” (6/15/20 Order at 10:19-21, n.8.)

26 With respect to the phased in plan for implementing the opt-out enrollment policy, this
27 Court ordered that the plan be “based on identified limitations, including certified staffing
28 needs for GATE itinerant teachers, with possible remedies, such as teacher stipends,
factored into the assessment equation to determine a viable phased in schedule for
applying the opt-out policy to pull-out GATE beginning in SY 2020-21.” (*Id.* at 11:23-
12:2.)

1 how they relate to the unidentified “pivotal role” teachers play in disseminating tutoring
2 services. (*Compare* ALE Policy Manual at 17 *with* 6/15/20 Order at 15:11-16:10
3 (detailing that the advisory/intervention or conference periods TUSD has elsewhere used
4 facilitate teachers’ ability to assess when students need extra help and whether tutoring
5 should be provided in individual or group settings).) Accordingly, this Court should order
6 TUSD to provide the complete clarification this Court requested in its 6/15/20 Order.
7

8 **CRC ALE Course Development and ALE Course Expansion**

9 Because the District refused to develop or provide any plan or clarification
10 concerning a schedule to expand ALE programs at any schools (by requesting relief from
11 those directives), TUSD has failed to comply with almost all of this Court’s 6/15/20 Order
12 directives in its discussion of “CRC ALE Course Development”¹⁰ (at 16:27-18:15).
13 Mendoza Plaintiffs above addressed why this Court should reject TUSD’s request for relief
14 from these directives, and therefore here simply detail each 6/15/20 Order directive in this
15 area with respect to which TUSD has failed to comply and as to which it has requested
16 relief (the last two of which are also addressed in the Santa Rita section below):
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- 19 • The ALE Policy Manual shall clarify the phased-in timeline (plan) for
20 offering at least one CRC AP course at every other high school [other than
21 UHS] and at least one CRC AAC at every middle school.
- 22 • The ALE Policy Manual shall clarify what the ‘appropriate ALE
23 opportunities’ means for future planning purposes, especially for AP and
24 Dual Credit courses.
- 25 • The ALE Policy shall determine the optimal number for ALE courses by
26 type and set target numbers for each school.

27 ¹⁰ Mendoza Plaintiffs recognize that the District has provided clarification that “the dual
28 purpose, AP/Dual Credit, policy may apply to CRC AP courses as well.” (6/15/20 Order
at 17:9-10.)

- 1 • The ALE Policy Manual shall clarify the phased in schedule for, accordingly, growing the HS-CC Dual Credit program at all high schools, except Santa Rita HS.
- 2
- 3 • The ALE Policy Manual shall clarify a phased in schedule for, accordingly, growing the AP program at all high schools, with a priority placed on growing AP courses at Santa Rita and Catalina.
- 4
- 5

6 (6/15/20 Order at 17:5-7, 18:8-15.)

7 Accordingly, Mendoza Plaintiffs respectfully request that this Court deny
8 TUSD's request for relief and order it to immediately comply with each above-cited
9 directive.

10
11 **Santa Rita/Dual Credit**

12 The ALE Policy Manual reports that Santa Rita has increased its AP offerings from
13 one to two (and the number of AP sections from one to two) (ALE Policy Manual at 26)
14 but fails to demonstrate that this is a “viable target number for providing equal access to
15 the extent practicable for African American and Latino students to this ALE at Santa Rita
16 HS.” (6/15/20 Order at 18:17-20.) Further, because TUSD has declined to engage in the
17 assessments ordered by the Court, it offers no showing of what a viable target number is
18 and has failed to respond to the Court's express statement that it “wants estimates of
19 participation to be based on other school's demands for AP courses, not just the alleged
20 lack of demand at Santa Rita HS.” (*Id.* at 19:4-5.) Again, because it has declined to plan,
21 the District also has failed to comply with the Court's order that “the ALE Policy Manual
22 shall clarify a phased in schedule for...growing the AP program at all high schools, with a
23 priority placed on growing AP courses at Santa Rita and Catalina high schools.” (*Id.* at 18:
24 13-15.)
25
26
27
28

1 Similarly, notwithstanding the Court's express adoption in the 6/15/20 Order of the
2 Special Master's recommendation that "Dual Credit (HS-CC) courses need to be expanded
3 beyond existing levels of 'one or more'" and its specific order that "the ALE Policy
4 Manual shall clarify a viable target number for Dual Credit courses for future planned
5 growth of ALE, if any" (6/15/20 Order at 19:7-11), the District has failed to do so, relying
6 on its general objection to having been ordered to plan.
7

8 Accordingly, the District should be ordered to take action to immediately plan for
9 the expansion of AP classes through out the District with priority attention to Santa Rita
10 and Catalina High schools and the expansion of Dual Credit (HS-CC) courses at all high
11 schools other than Santa Rita, and to revise the ALE Policy Manual accordingly.
12

13 UHS

14 It appears that the District has generally followed the Court's directions concerning
15 UHS policies and programs to be included in the ALE Policy Manual. However, there is
16 both a lack of clarity and an apparent inconsistency in the documents that the District has
17 prepared.
18

19 At page 36 of the ALE Policy Manual, TUSD repeats word for word the Court's
20 statement that it should clarify that "the revised norming rubric, retesting option for
21 borderline test scores, and the CogAt test preparation sessions are UHS policies, not pilot
22 strategies." (*Compare* 6/15/20 Order at 20:3-5 with ALE Policy Manual (last sentence of
23 the paragraph that begins "Students who want to attend...").) But the "revised norming
24 rubric" is nowhere explained. Further, there appears to be an inconsistency between
25 language in the body of the ALE Policy Manual and the attached UHS Admissions Policy.
26
27 As directed by the Court and consistent with current policy, the ALE Policy Manual says
28

1 “Seventh grade students who score a six stanine are invited to retest in 8th grade” (ALE
2 Policy Manual at 36) but the Admissions Policy says “Applicants who achieve a composite
3 stanine score of 6 or below are not permitted to retest for Freshman admissions” and states
4 that the only 8th graders who may be tested are those who were absent for their scheduled
5 test. (ALE Policy Manual at 50, 55.) These inconsistencies in the Admissions Policy
6 should be corrected.¹¹

8 **Pre-AP Mapping**

9 Having been ordered in September 2018 to “redesign [Pre-AP¹²] courses...to ensure
10 students successfully transition from Pre-AP to AP programs “based on the Court’s finding
11 of a “critical need for Pre-AP courses to be effective pipelines to AP courses, including the
12 AP curriculum offered at UHS” (9/6/18 Order at 74:13-15, 19-21), and directed in the
13 Court’s more recent Order of 6/15/20 (Doc. 2474) to “confirm, expressly that it has
14 mapped the pre-AP courses to align with the College Board standards for AP courses to
15 ensure to the extent practicable that Pre-AP courses are a successful means for increasing
16 student access in AP courses” (6/15/20 Order at 21:23-22:1), the District now reports that
17 it has not done so and that it “has no current plans to offer ‘Pre-AP’ courses in this College
18 Board sense, or to map its curricula for honors, advanced or accelerated courses to specific
19 AP courses.” (ALE Notice and Request at 13:1-3.) Further it states that it declines to do so
20 – and requests relief from the Court’s 6/15/20 Order (apparently ignoring the fact that the
21 Court’s 9/6/18 Order is identical in this regard).

25 ¹¹ When it makes those corrections, the District may also want to revise references to the
26 2019-20 school year on pages 42 and 44 of the ALE Policy Manual in its discussions of
27 UHS and more general District collaborations.

28 ¹² The USP expressly defines Pre-AP courses as those “formerly referred to as ‘Honors’,
‘Accelerated’, or ‘Advanced’.” USP Section V, A, 2, a.

1 This request must be denied (and its underlying actions should be considered by the
2 Court when it determines whether the District has acted in good faith to perform all of its
3 obligations under the USP) because the two orders it has violated call for action that is
4 **explicitly mandated by the USP**. USP Section V, A, 4 plainly states that the District
5 shall “[i]mprove the quality of **Pre-AP**¹³ and AP courses by making these courses subject
6 to audit by the College Board....” (Emphasis added.)
7

8 In its filing, the District implies that the directive that it map Pre-AP courses to
9 align with College Board standards is somehow new or unexpected. Yet, it not only is
10 stated in the USP; it also was the subject of extensive discussion in this Court’s September
11 2018 Order.¹⁴
12

13
14
15 ¹³ Again, Pre-AP is expressly defined to include Honors, Accelerated, and Advanced
16 classes. USP Section V, A, 2, a.

17 ¹⁴ This Court wrote, *inter alia*:

18 “The Court notes that the value of ...access [to Pre-APP courses] is limited unless
19 the District ensures that these Pre-AP courses effectively function as pipelines for AP
20 programs, including UHS.

21 Both Plaintiffs and the Special Master note problems with Pre-AP course
22 effectiveness. The Special Master asserts there is no evidence that existing Pre-AP classes
23 serve as a pipeline to enrollment and successful completion of AP and other rigorous high
24 school classes and whether and to what extent the Pre-AP classes need to be redesigned to
25 accomplish this stated goal. As the Fisher Plaintiffs articulately explain, it is not enough to
26 just increase the numbers of Pre-AP courses. ‘For this to be effective, the criteria and
27 curriculum for these classes need to be aligned with the College Board’, and 8th grade and
28 earlier grade standards must be aligned to ensure successful transitions from Pre-AP to AP
courses. Both Plaintiffs ask the District to redesign these courses and/or to offer additional
student support, inclusive but not limited to tutoring, to ensure students successfully
transition from Pre-AP to AP programs. The Mendoza Plaintiffs ask the District to
compare the AP success rate for students taking Pre-AP courses versus those transitioning
to AP courses from self-contained GATE programs (identifying Magee Middle School as
offering Pre-AP programs for comparison with Vail Middle School (INT) offering Self-
contained GATE). Given the critical need for Pre-AP courses to be effective pipelines to
AP courses, including the AP curriculum offered at UHS, the Court grants the Plaintiffs’
request.”

(9/6/18 Order at 74: 1-21; citations omitted.)

1 Significantly, the District offers absolutely no explanation for why it has failed to
2 implement the USP and comply with Court orders. Instead, it offers its **belief** that taking
3 the advanced academic courses it currently offers in middle school can help prepare
4 students to take more rigorous courses in high school. (ALE Notice and Request at 12:20-
5 24.) To this the Mendoza Plaintiffs offer the further response that it is far too late in the
6 day for the District to be justifying its educational decisions on the basis of its “belief”
7 rather than analysis, and that such a statement unfortunately reflects an approach that in
8 2008 led this Court to conclude that TUSD’s “failure to assess program effectiveness has
9 impeded its ability to use its resources to the extent practicable to secure minority students
10 equal access to educational opportunity.” (4/24/08 Order, Doc. 1270, at 27:14-16.)
11

12 Based on the foregoing, in addition to denying the District relief from its orders and
13 the express requirements of the USP, this Court should direct the District to delete the
14 paragraph that runs from page 23 to page 24 of the ALE Policy Manual (commencing with
15 the language “These courses have been at times referred to as ‘Pre-AP’ courses in the
16 USP...”) and replace it with provisions that conform to the USP requirements and this
17 Court’s prior orders.
18

19 **Transportation**¹⁵

20 As an initial matter, Mendoza Plaintiffs are puzzled by the District’s objection to
21 what it says was the Court’s order to “do detailed studies of its ALE programs, including
22 identification of specific students and specific travel times from those students’ residences
23
24
25

26 ¹⁵ Mendoza Plaintiffs of course recognize that transportation to District schools currently is
27 a moot issue given the impact of the coronavirus but the articulation of policies to govern
28 when transportation again is provided as well as compliance with relevant Court orders
and the USP remain essential.

1 to various ALE programs” (ALE Notice and Request at 8:14-16) because they do not read
2 this Court’s Order of 6/15/20 to have contained such a directive (although it did call for
3 some limited specific information relating to travel times for students qualifying for self-
4 contained GATE and the ridership of TUSD’s express buses).

5
6 It is the case that in its Order of 6/4/20 (Doc. 2471), the Court, addressing TUSD’s
7 implementation of the USP provisions relating to magnet schools, stated that the “District
8 needs to conduct the transportation assessments in sufficient detail to identify actual
9 transportation services needed for a priority candidate magnet school or non-magnet
10 school, such as: yellow buses, public transportation, contracted services, express shuttle
11 buses, activity buses, incentive transportation from racially concentrated neighborhoods or
12 incentive zones.” (6/4/20 Order at 14:13-17.) Thereafter, in its 6/15/20 Order, the Court
13 stated that the Transportation Plan provisions relating to ALEs were to be “[i]nformed by
14 the work of the Comprehensive Integration Plan (CIP) for assessments of travel distances,
15 locations of targeted populations, costs, and other factors...” (6/15/20 Order at 22:12-14).
16
17 Therefore, Mendoza Plaintiffs believe it is possible that what the District really is objecting
18 to are the assessments called for in the 6/4/20 Order.
19

20
21 In that regard, Mendoza Plaintiffs offer two observations: (1) This Court already
22 has considered and rejected TUSD’s objection to having been directed to perform those
23 assessments. (*See* 6/22/20 Order (Doc. 2485), granting in part and denying in part TUSD’s
24 motion for reconsideration.) (2) The assessments required by the 6/15/20 Order and the
25 District’s planning based thereon are on-going and not due to be filed with the Court until
26 September 1, 2020. Therefore, information and planning that ought inform the ALE
27 Transportation Plan is not yet fully available and plainly cannot have informed the
28

1 Transportation Plan currently before this Court. Mendoza Plaintiffs therefore submit their
 2 objections to and comments on the Transportation Plan filed 7/27/20 subject to an overall
 3 objection that that Plan is of necessity incomplete, and reserve the right to address ALE
 4 portions of the Transportation Plan¹⁶ once that Plan has been further revised to comply
 5 with the Court's 6/4/20 Order. Mendoza Plaintiffs also reserve their right to object to the
 6 portions of the Transportation Plan relating to magnet and incentive transportation
 7 (sections B, C, F (the second F as the plan currently has two sections so dominated), G,
 8 and H of the July 2020 Revised Transportation Plan).

9
 10
 11 Mendoza Plaintiffs object to the Transportation Plan on the grounds that it is not
 12 really a plan but, rather, a statement of current transportation policies. (Mendoza Plaintiffs
 13 note that they tendered the same objection to the Transportation Plan as originally filed in
 14 August 2019. (*See* Mendoza Plaintiffs' Response to TUSD Notice of Filing of 3-Year Plus
 15 Integration Plan (Doc. 2275) ("Mendoza 2019 Transportation Response") at 9:20-10:17
 16 and the August 2019 Transportation Plan (Doc. 2270-4).))¹⁷

17
 18
 19 ¹⁶ Although it does not appear to be relevant to the ALE aspects of the Transportation Plan,
 20 Mendoza Plaintiffs comment here on the section entitled Proposed Change to the
 21 Interpretation of Incentive Transportation to provide the District an opportunity to address
 22 their concerns while it is revising the Plan and thereby avoid objection relating to this
 23 provision after that Plan has been filed. Mendoza Plaintiffs believe that the section as
 24 drafted lacks needed clarity. As they understand it, the District may create an incentive
 25 zone if it concludes that the relevant census tract includes at least 30 students who do not
 26 then attend TUSD schools whose attendance at the designated receiving school would help
 27 integrate that school. What is unclear is whether the District is undertaking to provide free
 28 transportation from the incentive zone to the designated receiving school even if some or
 all of the students who actually seek to take advantage of that free transportation will NOT
 help integrate the receiving school. If that is the case, the Mendoza Plaintiffs object to the
 provision and suggest that it fails to comply with the Court's Order of 6/4/20 which
 explicitly stated that the Court was approving the District's proposal to create "incentive
 zones" "based upon the same eligibility criteria currently applied to students residing in
 racially concentrated neighborhoods" (6/4/20 Order at 14, n.10), that is, that their
 "enrollment will enhance integration at the receiving school." (USP, Section II, G, 2, b.)

¹⁷ Mendoza Plaintiffs note one telling example of the Transportation Plan's failure to serve
 as a plan although it does not directly relate to transportation to support student

Self-Contained GATE

1
2 With respect to transportation to self-contained GATE programs, Mendoza
3 Plaintiffs remain concerned that the District has not demonstrated in the Transportation
4 Plan that routes have been adjusted to address the concern that “one of the main reasons
5 given for not sending qualified students to Self-contained GATE programs is
6 transportation.” (9/6/19 Order at 65:21-66:5; *see also*, Mendoza 2019 Transportation
7 Response at 16:2-23.)

8
9 In this regard, Mendoza Plaintiffs note that the District’s refusal to comply with the
10 Court’s 6/15/20 Order further confounds the Court’s efforts to address this issue. Simply
11 put, it has provided no response to the Court’s directive in footnote 11 of the 6/15/20 Order
12 (at page 13): “The District shall confirm its use of the same travel distance parameters as
13 applied [to Hollinger] to determine that existing self-contained GATE schools were
14 available, i.e., reasonably accessible to all qualified students¹⁸, which the Court assumes
15 was a travel distance of approximating 20 to 30 minutes to a self-contained GATE school,
16 including open and cluster programs. If this assumption is wrong, the District shall clarify

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18
19
20 participation in ALEs in the hope that as with the example cited in the preceding footnote,
21 the District can address this failing before it submits its further revised Plan on September
22 1. In the section discussing the limitation of costs by utilizing existing routes rather than
23 adding routes, TUSD says that a “challenge with this strategy is that it may make it harder
24 to integrate a magnet school if the District is also offering free transportation to a nearby
25 non-magnet school – it may diminish the attractiveness of the magnet as the free
26 transportation ‘carrot’ is key to recruiting.” (Transportation Plan at 5.) Tellingly, the Plan
27 fails to set forth any criteria according to which the District will determine whether the
28 cost saving outweighs the risk of reducing integration of a given magnet school or what
steps it will put in place to reduce such a risk. Mendoza Plaintiffs believe these matters
should be addressed in the plan.

¹⁸ Indeed, it is difficult to believe that this is the case particularly for elementary school
students for whom long travel times are of greatest concern given that four of the five
elementary self-contained programs are in schools that are clustered in the middle of the
eastern portion of the District (Kellond, Lineweaver, Wheeler, and Roberts-Naylor) and
the fifth (White) is in the southwest quadrant. (*See* school maps on the TUSD website.)

1 the record as to what it considers a reasonable travel distance and identify the number of
2 qualified self-contained GATE students living beyond that travel distance as ‘not having
3 access to a self-contained GATE.’ The ALE Policy Manual shall confirm that there are no
4 Transportation Plan remedies for any such lack of access.”

5
6 The Mendoza Plaintiffs request that the District be required to comply with the
7 portion of the Court’s Order 6/15/20 set forth above and to revise its Transportation Plan
8 (and, potentially, the location of self-contained GATE programs particularly at the
9 elementary school level) based on the results of the ordered assessments.

10
11 *Open Access GATE*

12 So far as Mendoza Plaintiffs can determine, there is no reference to transportation to
13 schools offering open access GATE programs in the Transportation Plan and certainly no
14 discussion of the role of transportation in decisions regarding growth or expansion of open
15 access GATE. Mendoza Plaintiffs understand that there is free transportation to the open
16 access GATE program at Tully because Tully is a magnet school (and arguably included in
17 the Transportation Plan’s discussion of magnet school transportation). However, it is only
18 by reading the ALE Policy Manual (at page 11) that one can learn that the District limits
19 free transportation to Roberts-Naylor to participate in the open-access GATE middle
20 school program to those students who have attended Tully. Mendoza Plaintiffs object to
21 this limitation and request that the District be ordered to provide free transportation to all
22 participants in the Roberts-Naylor open-access GATE strand if they live outside the
23 school’s “walk zone”. They additionally object to the failure of the Transportation Plan to
24 discuss the role of transportation in decisions regarding growth or expansion of its open
25 access GATE program.
26
27
28

Dual Language

1
2 The Transportation Plan fails to comply with the Court’s direction relating to
3 planning for transportation for attendance at TWDL schools. It includes the statement that
4 TUSD provides free transportation to any student enrolled in a TWDL program who lives
5 outside the “walk zone” for the school in which that student is enrolled (Transportation
6 Plan at 3), but fails to include any discussion of the role of transportation in decisions
7 regarding growth or expansion of TWDL programs notwithstanding that so much of the
8 6/15/20 Order expressly required the Plan to “clarify transportation as a criterion for
9 selecting future candidates for ...non-ALE dual language TWDL schools.” (6/15/20 Order
10 at 25:1-3.) The Court should now require compliance with that Order.
11
12

Express Shuttles

13
14 As an initial proposition, Mendoza Plaintiffs note that TUSD has failed to comply
15 with so much of the Court’s 6/15/20 Order as required it to clarify that the express shuttles
16 are “transporting students from racially concentrated school neighborhoods or incentive
17 zones to schools where the student’s enrollment is improving integration of the receiving
18 school. Alternatively, free express shuttles may transport students, living beyond school
19 attendance boundaries, to schools hosting qualifying programs.” (6/15/20 Order at 24:2-8.)
20
21 The Transportation Plan reports that the Sabino express shuttle is “part of the incentive
22 transportation program” and lists the race and ethnicity of the students riding that shuttle
23 but fails to indicate whether they are traveling from racially concentrated school
24 neighborhoods. (Transportation Plan at 4.) The District tries to justify the Santa Rita
25 express shuttle on the alternative ground that it is providing transportation to a school that
26 hosts “qualifying programs.” However, it points primarily to the school’s programs for
27
28

1 career readiness which are not qualifying programs because they are not ALEs. It also
2 says that the express shuttle affords access to the school's dual credit courses but fails to
3 show that the four students in question actually are enrolled in the dual credit courses.
4 Moreover, the Plan (and the ALE Policy Manual to a great extent as well) ignore the
5 Court's express adoption of the Special Master's recommendation that "Dual Credit (HS-
6 CC) courses need to be expanded beyond existing levels of 'one or more'."¹⁹ Were such
7 courses to be expanded as directed it could well be that the four students currently riding
8 the express shuttle to Santa Rita would elect to enroll in dual credit courses in their home
9 school. (Mendoza Plaintiffs separately question the cost benefit analysis that the District
10 apparently asserts supports providing free transportation for four students to attend Santa
11 Rita in lieu of their home school and also suggest that given the opening of the new
12 Innovation Tech High School (nowhere discussed in the Transportation Plan) students
13 might well elect to that school rather than Santa Rita if their primary interest were in
14 programs for career readiness.)

15
16
17
18 *Cost*

19 The District's statement in 2017 that it was unable to create alternative routes to
20 reduce travel time to self-contained GATE schools due to budget constraints (9/6/18 Order
21 at 65:23-66:5) calls into question the repeated statements in the July 2020 Transportation
22 Plan that transportation costs are "generally not a factor" in the growth or expansion of the
23 self-contained GATE program or any other ALE program. (Transportation Plan at 6-7.)
24

25
26 ¹⁹ Indeed, the District has failed to provide the ordered viable target number for additional
27 dual credit courses at its high schools other than Santa Rita or a plan for reaching that
28 target. Rather it asserts, as it does with respect to all ALE expansion planning, that it
cannot do so "out of the context of a particular budget year and without knowing which
certified teachers will be available to teach at each school." (ALE Policy Manual at 6.)

1 Further, Mendoza Plaintiffs do not understand, and the District has provided no data
2 to support its assertion that expansion of self-contained GATE and GATE cluster programs
3 to a new school or adding a classroom to an additional school “does not increase
4 transportation costs, as fewer students need transportation to access a self-contained GATE
5 program” or a full time GATE cluster program. (Transportation Plan at 6, 7.) Mendoza
6 Plaintiffs do not understand how expansion to a new school or addition of additional
7 classrooms leads to fewer students needing transportation. By way of example, Mendoza
8 Plaintiffs do not understand how the addition of grades 7 and 8 to the Hollinger TWDL
9 GATE program and the movement of students from the Pistor TWDL GATE program to
10 Hollinger would not have entailed transportation costs (even assuming that a significant
11 number of the participants in the program had attended Hollinger through grade 6) since,
12 assuming Mendoza Plaintiffs are reading the boundary maps correctly, students who might
13 have been in the “walk zone” for Pistor, would not be in the “walk zone” for Hollinger.
14 Similarly, with respect to the creation of the 7th and 8th grade open access GATE strand at
15 Roberts-Naylor, Mendoza Plaintiffs do not understand how the provision of free
16 transportation to students who had attended Tully to enable them to participate in the
17 program would not have entailed cost. (And, as noted above, Mendoza Plaintiffs believe
18 that that cost might indeed need to be greater to meet their objection to limiting the offer of
19 free transportation to only those program participants who attended Tully.)
20
21
22
23

24 For all reasons stated above, the Court should direct the District to conduct the
25 assessments set forth in its 6/15/20 Order and revise its Transportation Plan based on the
26 information gleaned from those assessments and the specific substantive objections set
27 forth above.
28

1 **CONCLUSION**

2 The Court should deny the District's request for relief, require it to comply with this
3 Court's Orders of 9/6/18 and 6/15/20 and award the further specific relief set forth in each
4 Argument section above.

5 Respectfully submitted,
6

7
8 Dated: August 10, 2020

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19
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CERTIFICATE OF SERVICE

I hereby certify that on August 10, 2020, I electronically submitted the foregoing **MENDOZA PLAINTIFFS' RESPONSE TO TUSD SUPPLEMENTAL NOTICE AND REPORT OF COMPLIANCE AND LIMITED REQUEST FOR RELIEF FROM ORDER (DOC. 2500)** to the Office of the Clerk of the United States District Court for the District of Arizona for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

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Dated: August 10, 2020